

## **HIGHLIGHTS OF THIS ISSUE**

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### **SPECIAL ANNOUNCEMENT**

#### **Notice 2010-79, page 809.**

This notice alerts taxpayers to an amendment made to section 833 of the Code by the Patient Protection and Affordable Care Act (H.R. 3590, P.L. 111-148). In addition, this notice provides transitional relief and interim guidance on the interpretation and application of the amendment and requests comments on what further guidance, if any, is needed.

### **INCOME TAX**

#### **Rev. Rul. 2010-28, page 804.**

**2010 base period T-bill rate.** The “base period T-bill rate” for the period ending September 30, 2010, is published as required by section 995(f) of the Code.

#### **Notice 2010-79, page 809.**

This notice alerts taxpayers to an amendment made to section 833 of the Code by the Patient Protection and Affordable Care Act (H.R. 3590, P.L. 111-148). In addition, this notice provides transitional relief and interim guidance on the interpretation and application of the amendment and requests comments on what further guidance, if any, is needed.

#### **Rev. Proc. 2010-44, page 811.**

This procedure provides two safe harbor methods of accounting for certain motor vehicle dealerships to (1) treat certain sales facilities as retail sales facilities for purposes of section 263A of the Code, and (2) be treated as resellers without production activities for purposes of section 263A. This procedure also provides procedures for obtaining automatic consent to

change to the safe harbor methods. Rev. Proc. 2008-52 modified.

### **EMPLOYEE PLANS**

#### **Notice 2010-78, page 808.**

**2011 cost-of-living adjustments; retirements plans, etc.** This notice sets forth certain cost-of-living adjustments effective January 1, 2011, applicable to the dollar limitations on benefits and contributions under qualified retirement plans. The limitations that are adjusted by reference to § 415(d) generally will remain unchanged for 2011. Other limitations applicable to deferred compensation plans are also unchanged for 2011. This notice also contains cost-of-living adjustments for several pension-related amounts in restating the data in IR-2010-108 issued October 28, 2010.

### **EXEMPT ORGANIZATIONS**

#### **Announcement 2010-90, page 816.**

A list is provided of organizations now classified as private foundations.

(Continued on the next page)

Actions Relating to Court Decisions is on the page following the Introduction.  
Finding Lists begin on page ii.



## **ADMINISTRATIVE**

### **Notice 2010–79, page 809.**

This notice alerts taxpayers to an amendment made to section 833 of the Code by the Patient Protection and Affordable Care Act (H.R. 3590, P.L. 111–148). In addition, this notice provides transitional relief and interim guidance on the interpretation and application of the amendment and requests comments on what further guidance, if any, is needed.

### **Rev. Proc. 2010–45, page 813.**

**Nonshareholder contribution to capital under section 118(a).** This procedure provides a safe harbor under section 118(a) of the Code for the treatment of certain grants to corporations from the National Energy Technology Laboratory of the Department of Energy under the Electric Drive Vehicle Battery and Component Manufacturing Initiative as authorized by the American Recovery and Reinvestment Act of 2009 (ARRA).

### **Rev. Proc. 2010–46, page 814.**

**Nonshareholder contribution to capital under section 118(a).** This procedure provides a safe harbor under section 118(a) of the Code for certain amounts received by corporate taxpayers under certain Department of Transportation programs.

# The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and en-

force the law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

# Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in

certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all of those reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally,

will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner does not acquiesce in result or the reasoning in the following decision:

**VERITAS Software Corp.**  
**v. Commissioner<sup>1</sup>**  
133 T.C. No. 14 (December 10, 2009).

<sup>1</sup> The Service believes the Court’s factual findings and legal assertions are erroneous. Therefore, it does not acquiesce in the result or the reasoning of the decision.

# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 995.—Taxation of DISC Income to Shareholders

**2010 base period T-bill rate.** The “base period T-bill rate” for the period ending September 30, 2010, is published as required by section 995(f) of the Code.

### Rev. Rul. 2010–28

Section 995(f)(1) of the Internal Revenue Code provides that a shareholder of a DISC shall pay interest each taxable year in an amount equal to the product of the shareholder’s DISC-related deferred tax liability for the year and the “base period T-bill rate.” Under section 995(f)(4), the base period T-bill rate is the annual rate of interest determined by the Secretary to be equivalent to the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder. The base period T-bill rate for the period ending September 30, 2010, is 0.34 percent.

Pursuant to section 6222 of the Code, interest must be compounded daily. The table below provides factors for compounding the base period T-bill rate daily for any number of days in the shareholder’s taxable year (including a 52–53 week accounting period) for the 2010 base period T-bill rate. To compute the amount of the interest charge for the shareholder’s taxable year, multiply the amount of the shareholder’s DISC-related deferred tax liability (as defined in section 995(f)(2)) for that year by the base period T-bill rate factor corresponding to the number of days in the shareholder’s taxable year for which the interest charge is being computed. Generally, one would use the factor for 365 days. One would use a different factor only if the shareholder’s taxable year for which the interest charge being determined is a short taxable year, if the shareholder uses the 52–53 week taxable year, or if the shareholder’s taxable year is a leap year.

For the base period T-bill rates for the periods ending in prior years, see Rev. Rul. 2009–36, 2009–47 I.R.B. 650; Rev. Rul. 2008–51, 2008–2 C.B. 1171; Rev. Rul. 2007–64, 2007–2 C.B. 953; Rev. Rul. 2006–54, 2006–2 C.B. 834; Rev. Rul. 2005–70, 2005–2 C.B. 919; Rev. Rul. 2004–99, 2004–2 C.B. 720; Rev. Rul. 2003–2, 2003–1 C.B. 251; and Rev. Rul. 2002–68, 2002–2 C.B. 808.

### DRAFTING INFORMATION

The principal author of this revenue ruling is Teresa Burrridge Hughes of the Office of Associate Chief Counsel (International). For further information regarding this revenue ruling, contact Ms. Hughes at (202) 622–3850 (not a toll-free call).

2010 ANNUAL RATE,  
COMPOUNDED DAILY

0.34 PERCENT

DAYS	FACTOR
26	.000242220
27	.000251537
28	.000260855
29	.000270172
30	.000279490
31	.000288807
32	.000298125
33	.000307443
34	.000316761
35	.000326079
36	.000335397
37	.000344715
38	.000354034
39	.000363352
40	.000372670
41	.000381989
42	.000391308
43	.000400626
44	.000409945
45	.000419264
46	.000428583
47	.000437902
48	.000447221
49	.000456540
50	.000465860
51	.000475179
52	.000484499
53	.000493818
54	.000503138
55	.000512458
56	.000521777
57	.000531097
58	.000540417
59	.000549738
60	.000559058
61	.000568378
62	.000577698
63	.000587019
64	.000596339
65	.000605660

2010 ANNUAL RATE,  
COMPOUNDED DAILY

0.34 PERCENT

DAYS	FACTOR
1	.000009315
2	.000018630
3	.000027945
4	.000037261
5	.000046576
6	.000055892
7	.000065207
8	.000074523
9	.000083839
10	.000093155
11	.000102471
12	.000111787
13	.000121103
14	.000130419
15	.000139735
16	.000149052
17	.000158368
18	.000167685
19	.000177001
20	.000186318
21	.000195635
22	.000204952
23	.000214269
24	.000223586
25	.000232903

2010 ANNUAL RATE,  
COMPOUNDED DAILY

0.34 PERCENT

DAYS	FACTOR
66	.000614981
67	.000624301
68	.000633622
69	.000642943
70	.000652264
71	.000661586
72	.000670907
73	.000680228
74	.000689549
75	.000698871
76	.000708193
77	.000717514
78	.000726836
79	.000736158
80	.000745480
81	.000754802
82	.000764124
83	.000773446
84	.000782768
85	.000792091
86	.000801413
87	.000810736
88	.000820058
89	.000829381
90	.000838704
91	.000848027
92	.000857350
93	.000866673
94	.000875996
95	.000885319
96	.000894642
97	.000903966
98	.000913289
99	.000922613
100	.000931936
101	.000941260
102	.000950584
103	.000959908
104	.000969232
105	.000978556

2010 ANNUAL RATE,  
COMPOUNDED DAILY

0.34 PERCENT

DAYS	FACTOR
106	.000987880
107	.000997205
108	.001006529
109	.001015853
110	.001025178
111	.001034503
112	.001043827
113	.001053152
114	.001062477
115	.001071802
116	.001081127
117	.001090452
118	.001099777
119	.001109103
120	.001118428
121	.001127753
122	.001137079
123	.001146405
124	.001155730
125	.001165056
126	.001174382
127	.001183708
128	.001193034
129	.001202360
130	.001211687
131	.001221013
132	.001230340
133	.001239666
134	.001248993
135	.001258319
136	.001267646
137	.001276973
138	.001286300
139	.001295627
140	.001304954
141	.001314281
142	.001323609
143	.001332936
144	.001342264
145	.001351591

2010 ANNUAL RATE,  
COMPOUNDED DAILY

0.34 PERCENT

DAYS	FACTOR
146	.001360919
147	.001370247
148	.001379574
149	.001388902
150	.001398230
151	.001407558
152	.001416887
153	.001426215
154	.001435543
155	.001444872
156	.001454200
157	.001463529
158	.001472858
159	.001482186
160	.001491515
161	.001500844
162	.001510173
163	.001519502
164	.001528832
165	.001538161
166	.001547490
167	.001556820
168	.001566149
169	.001575479
170	.001584809
171	.001594139
172	.001603469
173	.001612799
174	.001622129
175	.001631459
176	.001640789
177	.001650119
178	.001659450
179	.001668780
180	.001678111
181	.001687442
182	.001696772
183	.001706103
184	.001715434
185	.001724765

2010 ANNUAL RATE,  
COMPOUNDED DAILY

0.34 PERCENT

DAYS	FACTOR
186	.001734096
187	.001743428
188	.001752759
189	.001762090
190	.001771422
191	.001780753
192	.001790085
193	.001799417
194	.001808749
195	.001818081
196	.001827413
197	.001836745
198	.001846077
199	.001855409
200	.001864741
201	.001874074
202	.001883406
203	.001892739
204	.001902072
205	.001911405
206	.001920737
207	.001930070
208	.001939403
209	.001948737
210	.001958070
211	.001967403
212	.001976736
213	.001986070
214	.001995404
215	.002004737
216	.002014071
217	.002023405
218	.002032739
219	.002042073
220	.002051407
221	.002060741
222	.002070075
223	.002079410
224	.002088744
225	.002098079

2010 ANNUAL RATE,  
COMPOUNDED DAILY

0.34 PERCENT

DAYS	FACTOR
226	.002107413
227	.002116748
228	.002126083
229	.002135418
230	.002144752
231	.002154088
232	.002163423
233	.002172758
234	.002182093
235	.002191429
236	.002200764
237	.002210100
238	.002219435
239	.002228771
240	.002238107
241	.002247443
242	.002256779
243	.002266115
244	.002275451
245	.002284787
246	.002294124
247	.002303460
248	.002312797
249	.002322133
250	.002331470
251	.002340807
252	.002350144
253	.002359481
254	.002368818
255	.002378155
256	.002387492
257	.002396829
258	.002406167
259	.002415504
260	.002424842
261	.002434179
262	.002443517
263	.002452855
264	.002462193
265	.002471531

2010 ANNUAL RATE,  
COMPOUNDED DAILY

0.34 PERCENT

DAYS	FACTOR
266	.002480869
267	.002490207
268	.002499545
269	.002508884
270	.002518222
271	.002527561
272	.002536899
273	.002546238
274	.002555577
275	.002564916
276	.002574255
277	.002583594
278	.002592933
279	.002602272
280	.002611611
281	.002620951
282	.002630290
283	.002639630
284	.002648969
285	.002658309
286	.002667649
287	.002676989
288	.002686329
289	.002695669
290	.002705009
291	.002714350
292	.002723690
293	.002733030
294	.002742371
295	.002751711
296	.002761052
297	.002770393
298	.002779734
299	.002789075
300	.002798416
301	.002807757
302	.002817098
303	.002826439
304	.002835781
305	.002845122

2010 ANNUAL RATE,  
COMPOUNDED DAILY

0.34 PERCENT

DAYS	FACTOR
306	.002854464
307	.002863806
308	.002873147
309	.002882489
310	.002891831
311	.002901173
312	.002910515
313	.002919857
314	.002929200
315	.002938542
316	.002947884
317	.002957227
318	.002966570
319	.002975912
320	.002985255
321	.002994598
322	.003003941
323	.003013284
324	.003022627
325	.003031970

2010 ANNUAL RATE,  
COMPOUNDED DAILY

0.34 PERCENT

DAYS	FACTOR
326	.003041314
327	.003050657
328	.003060001
329	.003069344
330	.003078688
331	.003088031
332	.003097375
333	.003106719
334	.003116063
335	.003125407
336	.003134752
337	.003144096
338	.003153440
339	.003162785
340	.003172129
341	.003181474
342	.003190818
343	.003200163
344	.003209508
345	.003218853

2010 ANNUAL RATE,  
COMPOUNDED DAILY

0.34 PERCENT

DAYS	FACTOR
346	.003228198
347	.003237543
348	.003246888
349	.003256234
350	.003265579
351	.003274925
352	.003284270
353	.003293616
354	.003302962
355	.003312308
356	.003321653
357	.003330999
358	.003340346
359	.003349692
360	.003359038
361	.003368384
362	.003377731
363	.003387077
364	.003396424
365	.003405771
366	.003415117
367	.003424464
368	.003433811
369	.003443158
370	.003452506
371	.003461853

## Part III. Administrative, Procedural, and Miscellaneous

### 2011 Limitations Adjusted As Provided in Section 415(d), etc.<sup>1</sup>

#### Notice 2010-78

Section 415 of the Internal Revenue Code (the Code) provides for dollar limitations on benefits and contributions under qualified retirement plans. Section 415(d) requires that the Commissioner annually adjust these limits for cost-of-living increases. Other limitations applicable to deferred compensation plans are also affected by these adjustments under § 415. Under § 415(d), the adjustments are to be made pursuant to adjustment procedures which are similar to those used to adjust benefit amounts under § 215(i)(2)(A) of the Social Security Act.

The limitations that are adjusted by reference to § 415(d) generally will remain unchanged for 2011. This is because the cost-of-living index for the quarter ended September 30, 2010, while greater than the cost-of-living index for the quarter ended September 30, 2009, is less than the cost-of-living index for the quarter ended September 30, 2008, and, following the procedures under the Social Security Act for adjusting benefit amounts, any decline in the applicable index cannot result in a reduced limitation. For example, the limitation under § 402(g)(1) on the exclusion for elective deferrals described in § 402(g)(3) will be \$16,500 for 2011, which is the same amount as for 2009 and 2010. This limitation affects elective deferrals to § 401(k) plans, § 403(b) plans, and to the Federal Government's Thrift Savings Plan, among other plans.

#### Cost-of-Living Adjusted Limits for 2011

Effective January 1, 2011, the limitation on the annual benefit under a defined benefit plan under § 415(b)(1)(A) remains unchanged at \$195,000. Pursuant to § 1.415(d)-1(a)(2)(ii) of the Income Tax Regulations, the adjustment to the limitation under a defined benefit plan under § 415(b)(1)(B) is determined using a special rule that takes into account that

the cost-of-living indexes for the quarter ended Sept. 30, 2009, and for the quarter ended Sept. 30, 2010, were both less than the cost-of-living index for the quarter ended Sept. 30, 2008, and that the cost-of-living index for the quarter ended Sept. 30, 2010, is greater than the cost-of-living index for the quarter ended Sept. 30, 2009. For a participant who separated from service before Jan. 1, 2010, the participant's limitation under a defined benefit plan under § 415(b)(1)(B) is unchanged (*i.e.*, the adjustment factor is 1.0000). For a participant who separated from service during 2010, the limitation under a defined benefit plan under § 415(b)(1)(B) for 2011 is computed by multiplying the participant's 2010 compensation limitation by 1.0118 in order to reflect changes in the cost-of-living index from the quarter ended Sept. 30, 2009, to the quarter ended Sept. 30, 2010.

The limitation for defined contribution plans under § 415(c)(1)(A) remains unchanged for 2011 at \$49,000.

The Code provides that various other dollar amounts are to be adjusted at the same time and in the same manner as the dollar limitation of § 415(b)(1)(A). After taking into account the applicable rounding rules, the amounts for 2011 are as follows:

The limitation under § 402(g)(1) on the exclusion for elective deferrals described in § 402(g)(3) remains unchanged at \$16,500.

The annual compensation limit under §§ 401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii) remains unchanged at \$245,000.

The dollar limitation under § 416(i)(1)(A)(i) concerning the definition of key employee in a top-heavy plan remains unchanged at \$160,000.

The dollar amount under § 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a 5-year distribution period remains unchanged at \$985,000, while the dollar amount used to determine the lengthening of the 5-year distribution period remains unchanged at \$195,000.

The limitation used in the definition of highly compensated employee under § 414(q)(1)(B) remains unchanged at \$110,000.

The dollar limitation under § 414(v)(2)(B)(i) for catch-up contributions to an applicable employer plan other than a plan described in § 401(k)(11) or 408(p) for individuals aged 50 or over remains unchanged at \$5,500. The dollar limitation under § 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in § 401(k)(11) or 408(p) for individuals aged 50 or over remains unchanged at \$2,500.

The annual compensation limitation under § 401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost-of-living adjustments to the compensation limitation under the plan under § 401(a)(17) to be taken into account, remains unchanged at \$360,000.

The compensation amount under § 408(k)(2)(C) regarding simplified employee pensions (SEPs) remains unchanged at \$550.

The limitation under § 408(p)(2)(E) regarding SIMPLE retirement accounts remains unchanged at \$11,500.

The limitation on deferrals under § 457(e)(15) concerning deferred compensation plans of state and local governments and tax-exempt organizations remains unchanged at \$16,500.

The compensation amounts under § 1.61-21(f)(5)(i) of the Income Tax Regulations concerning the definition of "control employee" for fringe benefit valuation purposes remains unchanged at \$95,000. The compensation amount under § 1.61-21(f)(5)(iii) remains unchanged at \$195,000.

The Code also provides that several pension-related amounts are to be adjusted using the cost-of-living adjustment under § 1(f)(3). After taking the applicable rounding rules into account, the amounts for 2011 are as follows:

The adjusted gross income limitation under § 25B(b)(1)(A) for determining the retirement savings contribution credit for taxpayers filing a joint return is increased from \$33,500 to \$34,000; the limitation

<sup>1</sup> Based on News Release IR-2010-108 dated October 28, 2010.

under § 25B(b)(1)(B) is increased from \$36,000 to \$36,500; and the limitation under § 25B(b)(1)(C) and (D) is increased from \$55,500 to \$56,500.

The adjusted gross income limitation under § 25B(b)(1)(A) for determining the retirement savings contribution credit for taxpayers filing as head of household is increased from \$25,125 to \$25,500; the limitation under § 25B(b)(1)(B) is increased from \$27,000 to \$27,375; and the limitation under § 25B(b)(1)(C) and (D) is increased from \$41,625 to \$42,375.

The adjusted gross income limitation under § 25B(b)(1)(A) for determining the retirement savings contribution credit for all other taxpayers is increased from \$16,750 to \$17,000; the limitation under § 25B(b)(1)(B) is increased from \$18,000 to \$18,250; and the limitation under § 25B(b)(1)(C) and (D) is increased from \$27,750 to \$28,250.

The deductible amount under § 219(b)(5)(A) for an individual making qualified retirement contributions remains unchanged at \$5,000.

The applicable dollar amount under § 219(g)(3)(B)(i) for determining the deductible amount of an IRA contribution for taxpayers who are active participants filing a joint return or as a qualifying widow(er) is increased from \$89,000 to \$90,000. The applicable dollar amount under § 219(g)(3)(B)(ii) for all other taxpayers (other than married taxpayers filing separate returns) remains unchanged at \$56,000. The applicable dollar amount under § 219(g)(7)(A) for a taxpayer who is not an active participant but whose spouse is an active participant is increased from \$167,000 to \$169,000.

The adjusted gross income limitation under § 408A(c)(3)(C)(ii)(I) for determining the maximum Roth IRA contribution for taxpayers filing a joint return or as a qualifying widow(er) is increased from \$167,000 to \$169,000. The adjusted gross income limitation under § 408A(c)(3)(C)(ii)(II) for all other taxpayers (other than married taxpayers filing separate returns) is increased from \$105,000 to \$107,000.

The dollar amount under Section 430(c)(7)(D)(i)(II) used to determine excess employee compensation with respect to a single-employer defined benefit pension plan for which the special election un-

der section 430(c)(2)(D) has been made is increased from \$1,000,000 to \$1,014,000.

### Drafting Information

The principal author of this notice is John Heil of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding the data in this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free call) between the hours of 8:30 a.m. and 4:30 p.m. Eastern time Monday through Friday. For information regarding the methodology used in arriving at the data in this notice, please e-mail Mr. Heil at [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov).

## Modification of Section 833 Treatment of Certain Health Organizations

### Notice 2010-79

#### SECTION 1. PURPOSE

.01 This notice alerts taxpayers to an amendment made to § 833 of the Internal Revenue Code (Code) by the Patient Protection and Affordable Care Act (H.R. 3590, P.L. 111-148) (the "Affordable Care Act"). Section 833 provides special rules for certain Blue Cross and Blue Shield organizations, and certain other organizations. Effective for taxable years beginning after December 31, 2009, the amendment adds new § 833(c)(5), which limits the application of § 833 to otherwise-qualifying taxpayers with a medical loss ratio that is not less than 85 percent.

.02 This notice also provides interim guidance to taxpayers on the interpretation and application of § 833(c)(5). The Affordable Care Act was enacted on March 23, 2010, adding § 833(c)(5) with retroactive effect for taxable years beginning after December 31, 2009. The Treasury Department and the Internal Revenue Service (Service) are engaged in developing detailed guidance for this provision. That guidance must also take into account other closely related guidance that the Department of Health and Human Services (HHS) has just published. To allow affected taxpayers to comply with the mid-year change in law while

detailed guidance is under development, the Treasury Department and the Service are providing interim guidance on the operation of § 833(c)(5) for the first taxable year beginning after December 1, 2009.

#### SECTION 2. BACKGROUND

.01 An insurance company other than a life insurance company is subject to tax under § 831.

.02 Section 831(c) provides that for purposes of § 831, the term "insurance company" has the meaning given to such term by § 816(a). Section 816(a) provides the term "insurance company" means any company more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.

.03 Section 832(a) provides that, for an insurance company subject to the tax imposed by § 831, the term "taxable income" means the company's gross income as defined in § 832(b)(1) less the deductions authorized in § 832(c). Under § 832(b)(1), gross income includes underwriting income.

.04 Section 832(b)(3) defines underwriting income as the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred.

.05 Section 832(b)(4) defines the term "premiums earned on insurance contracts during the taxable year" as the gross premiums written on insurance contracts during the taxable year, less return premiums and premiums paid for reinsurance. The result so obtained is further adjusted by adding 80 percent of the unearned premiums on outstanding business at the end of the preceding taxable year and deducting 80 percent of the unearned premiums on outstanding business at the end of the taxable year.

.06 Section 833 provides special rules for existing Blue Cross or Blue Shield organizations and other organizations that meet the requirements of § 833(c)(3)—

(a) Section 833(a)(1) states that such an organization is subject to tax in the same manner as if it were a stock insurance company;

(b) Section 833(a)(2) allows a special deduction for such an organization, determined under § 833(b), which is the excess (if any) of (i) 25 percent of the sum of the

claims incurred during the taxable year, liabilities incurred during the taxable year under cost-plus contracts, and expenses incurred during the taxable year in connection with the administration, adjustment, or settlement of claims or in connection with the administration of cost-plus contracts, over (ii) the adjusted surplus as of the beginning of the taxable year; and

(c) Section 833(a)(3) provides that the 20 percent reduction of unearned premiums set forth in § 832(b)(4) does not apply to such an organization.

.07 Section 9016 of the Affordable Care Act added § 833(c)(5) to the Code, effective for taxable years beginning after December 31, 2009. Section 833(c)(5) provides that § 833 does not apply to an otherwise-eligible organization unless the organization's medical loss ratio, as defined, during the taxable year is not less than 85 percent. For this purpose, an organization's medical loss ratio is equal to the amount expended on reimbursement for clinical services provided to enrollees under its policies during the taxable year (as reported under § 2718 of the Public Health Service Act) ("Section 833 MLR Numerator") divided by the organization's total premium revenue ("Section 833 MLR Denominator").

.08 Section 2718 of the Public Health Service Act (the "PHS Act") was added by § 1001 and amended by § 10101 of the Affordable Care Act, and was incorporated into the Code by § 9815(a)(1). Section 2718(a) of the PHS Act requires a health insurance issuer to submit an annual report to the Secretary of HHS concerning the ratio of the incurred loss (or incurred claims) plus the loss adjustment expenses (or change in contract reserves) to earned premiums. The report must include the percentage of total premium revenue, after accounting for collections or receipts for risk adjustment and risk corridors and payments of reinsurance, that the issuer expends (a) on reimbursement for clinical services provided to enrollees; (b) for activities that improve health care quality; and (c) on all other non-claims costs.

.09 Section 2718(b) of the PHS Act requires that a health insurance issuer, beginning not later than January 1, 2011, provide a rebate to each enrollee, on a *pro rata* basis, if the ratio of (a) the amount of premium revenue expended on reimbursement for clinical services and for activities

that improve health care quality to (b) the total amount of premium revenue (excluding Federal and State taxes and licensing or regulatory fees and after accounting for payments or receipts for risk adjustment, risk corridors and reinsurance) is less than a prescribed percentage.

.10 Section 2718(c) of the PHS Act directs the National Association of Insurance Commissioners (NAIC) to establish uniform definitions of the activities required to be reported to the Department of HHS under § 2718(a), and standardized methodologies for calculating measures of these activities, not later than December 31, 2010, and subject to the certification of the Secretary of HHS. On November 22, 2010, the Department of HHS filed with the Federal Register, for publication December 1, 2010, interim final regulations implementing § 2718. See [http://www.ofr.gov/OFRUupload/OFR-Data/2010-29596\\_PI.pdf](http://www.ofr.gov/OFRUupload/OFR-Data/2010-29596_PI.pdf).

### SECTION 3. INTERIM GUIDANCE FOR 2010

.01 The Treasury Department and the Service are aware that because § 833(c)(5) applies to taxable years beginning after December 31, 2009 (including the period in 2010 before enactment of the Affordable Care Act), the implementation of § 833(c)(5) presents issues for the first taxable year beginning after December 31, 2009. Moreover, because § 833(c)(5) references § 2718 of the PHS Act, the Treasury Department and the Service, and taxpayers, will need to consider the effect, if any, of the recently-published guidance under § 2718 on issues that arise under § 833(c)(5). Finally, the Treasury Department and the Service anticipate issuing further guidance on § 833(c)(5). Accordingly, this Section 3 provides interim guidance that taxpayers may rely on solely for the first taxable year beginning after December 31, 2009.

#### *Computation of MLR Numerator for Purposes of § 833(c)(5)*

.02 For purposes of determining whether a taxpayer's percentage of total premium revenue expended on reimbursement for clinical services provided to enrollees is not less than 85 percent (and thus satisfies the requirement of § 833(c)(5)),

taxpayers must use the definition of "reimbursement for clinical services provided to enrollees" that is set forth in HHS interim final regulations.

.03 For purposes of determining whether the 85-percent requirement of § 833(c)(5) is satisfied, the Service will not challenge the inclusion of "amounts expended for activities that improve health care quality" as defined in HHS interim final regulations.

#### *Consequences of Nonapplication of § 833 by Reason of § 833(c)(5)*

.04 Section 833(c)(5) provides that § 833 does not apply to an organization unless the organization's percentage of total premium revenue expended on reimbursement for clinical services provided to enrollees is not less than 85 percent. Accordingly, the consequences for an organization for which this amount is less than 85 percent are as follows:

(a) The organization is not taxable as a stock insurance company by reason of § 833(a)(1) (but may be taxable as an insurance company if it otherwise meets the requirements of § 831(c));

(b) The organization is not allowed the special deduction set forth in § 833(b); and

(c) The organization takes into account 80 percent, rather than 100 percent, of its unearned premiums for purposes of computing premiums earned on insurance contracts during the taxable year under § 832(b)(4).

.05 Notwithstanding Section 3.04(a) of this notice and solely for the first taxable year beginning after December 31, 2009, the Service will not treat a taxpayer as losing its status as a stock insurance company by reason of § 833(c)(5) provided the following conditions are met—

(a) the taxpayer was described in § 833(c) in the immediately preceding taxable year;

(b) the taxpayer would have been taxed as a stock insurance company for the current taxable year but for the enactment of § 833(c)(5); and

(c) the taxpayer would have met the requirements of § 831(c) to be taxed as an insurance company for the current taxable year but for its activities in the administration, adjustment or settlement of claims under cost-plus or administrative services-only contracts.

## Changes in Accounting Method

.06 Section 446(e) of the Code states that, except as otherwise provided, a taxpayer that changes a method of accounting on the basis of which it regularly computes income in keeping its books must secure consent before computing taxable income under a new method. Section 1.446-1(e)(3)(i) of the Income Tax Regulations requires that, except as provided under the authority of § 1.446-1(e)(3)(ii), to secure the Commissioner's consent to change its method of accounting, a taxpayer must file a Form 3115, *Application for Change in Accounting Method*, during the taxable year in which the taxpayer desires to make the proposed change.

.07 Rev. Proc. 97-27, 1997-1 C.B. 680, as amplified and modified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, as modified by Rev. Proc. 2007-67, 2007-2 C.B. 1072, and as clarified and modified by Rev. Proc. 2009-39, 2009-2 C.B. 371, provides the general procedures for obtaining the advance consent of the Commissioner to change a method of accounting. See also Rev. Proc. 2010-1, 2010-1 I.R.B. 1 (or any successor).

.08 The application of § 833 in a taxable year followed by nonapplication of that provision in the subsequent taxable year (or *vice versa*) may result in one or more changes in accounting method. For example, accounting for 100 percent of unearned premiums under § 833(a)(3) in one year, but only 80 percent of unearned premiums under § 832(b)(4) in the next year, is a change in method of accounting. Likewise, the loss (or recovery) of insurance company status may implicate a number of changes in methods of accounting because some methods of accounting are available only to insurance companies under Subchapter L. The special deduction allowed under § 833(a)(2) and § 833(b) is not, however, a method of accounting.

.09 A taxpayer that is required to change one or more methods of accounting by reason of the application or nonapplication of § 833 must secure consent for these changes under the advance consent procedures of Rev. Proc. 97-27. These accounting method changes are not within the scope of Rev. Proc. 2008-52, 2008-2

C.B. 587, as amplified, clarified, and modified by Rev. Proc. 2009-39.

## SECTION 4. PROCEDURAL INFORMATION AND RELIANCE ON INTERIM GUIDANCE

This notice serves as an “administrative pronouncement” as that term is used in § 1.6662-4(d)(3)(iii) of the Income Tax Regulations and may be relied upon to the same extent as a revenue ruling or revenue procedure. If, and to the extent, future published guidance differs from the interim guidance in this notice, the different provisions of that future guidance will be applied without adverse retroactive effect.

## SECTION 5. REQUEST FOR COMMENTS

.01 The Treasury Department and the Service request comments on the following:

(a) What guidance, if any, will taxpayers need under § 833(c)(5) for years after the transition year that is addressed in Section 3 of this notice?

(b) Is more specific guidance needed on accounting method issues that arise when a taxpayer loses its status as an insurance company?

(c) Will guidance be needed in the future on the appropriate Subchapter L treatment of rebates that are paid under § 2718 of the PHS Act?

(d) The Treasury Department and the Service recognize that medical loss ratios are computed under § 2718 of the PHS Act, as well as under § 833(c)(5). Comments are requested on how guidance could coordinate the medical loss ratio computation under § 2718 of the PHS Act with the medical loss ratio computation under § 833(c)(5).

.02 Comments should be submitted in writing on or before March 7, 2011 and should contain reference to this Notice 2010-79. Comments may be submitted to CC:PA:LPD:PR (Notice 2010-79), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, taxpayers may submit comments electronically to [NoticeComments@irscounsel.treas.gov](mailto:NoticeComments@irscounsel.treas.gov). Please include “Notice 2010-79” in the subject line of any electronic communications.

.03 Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2010-79), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224. All comments will be available for public inspection and copying.

## DRAFTING INFORMATION

The principal author of this notice is Rebecca L. Baxter of the Office of Associate Chief Counsel (Financial Institutions & Products (CC:FIP:B04)). For further information regarding this notice, contact Ms. Baxter at (202) 622-7117 (not a toll-free call).

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26 CFR 1.263-1: Uniform capitalization of costs.  
(Also: §§ 446; 1.263A-2, 1.263A-3, 1.446-1.)

## Rev. Proc. 2010-44

### SECTION 1. PURPOSE

This revenue procedure provides that certain motor vehicle dealerships may use either or both of the safe harbor methods of accounting provided by this revenue procedure to (1) treat certain sales facilities as retail sales facilities for purposes of § 263A of the Internal Revenue Code, and (2) be treated as resellers without production activities for purposes of § 263A. This revenue procedure also provides procedures for obtaining automatic consent to make accounting method changes to use the safe harbor methods.

### SECTION 2. BACKGROUND

.01 Sections 263A(a) and 1.263A-1(a)(3)(i) of the Income Tax Regulations require a taxpayer subject to § 263A to include in inventory costs direct costs and indirect costs properly allocable to the taxpayer's produced and acquired inventory property.

.02 Section 1.263A-3(c)(1) requires a taxpayer that acquires property for resale (reseller) to capitalize the acquisition cost of, and the indirect costs that are properly allocable to, property acquired for resale. The indirect costs most often incurred by resellers are purchasing, handling, and storage costs. However, a reseller is not required to capitalize handling

and storage costs incurred at a retail sales facility. §§ 1.263A-3(c)(4)(i) and (c)(5).

.03 Handling costs include the costs of processing, assembling, repackaging, transporting, and other similar activities that do not come within the meaning of the term produce as defined in § 1.263A-2(a)(1). § 1.263A-3(c)(4).

.04 Section 1.263A-3(c)(5)(ii)(B) defines a retail sales facility as a facility where a taxpayer sells merchandise exclusively to retail customers in on-site sales. For purposes of § 1.263A-3(c)(5)(ii)(B), a retail sales facility includes those portions of any specific retail site (i) that are customarily associated with and are an integral part of the operations of that retail site; (ii) that are generally open each business day exclusively to retail customers; (iii) on or in which retail customers normally and routinely shop to select specific items of merchandise; and (iv) that are adjacent to or in immediate proximity to other portions of the specific retail site.

.05 As explained in the example in § 1.263A-3(c)(5)(ii)(B)(2), two lots of an automobile dealership physically separated by an alley or an access road are generally considered one retail sales facility, provided customers routinely shop on both of the lots to select the specific automobiles that they wish to acquire.

.06 Section 1.263A-3(c)(5)(ii)(E) defines a retail customer as the final purchaser of the merchandise.

.07 Section 263A(i) provides that the Treasury Department will prescribe regulations as may be necessary or appropriate to carry out the purposes of § 263A, including providing for simplified procedures for the application of § 263A to property acquired for resale.

.08 Section 1.263A-3(d) provides a simplified resale method for determining the additional § 263A costs (within the meaning of § 1.263A-1(d)(3)) properly allocable to property acquired for resale and other eligible property on hand at the end of the taxable year.

.09 In the Conference Report accompanying the Tax Reform Act of 1986, Public Law No. 99-514 (100 Stat. 2085 (1986)), the conferees directed the Treasury Department to create a simplified method for applying the uniform capitalization rules of § 263A to resellers (resulting in the simplified resale method in § 1.263A-3(d)) and authorized the Treasury Department

to modify the simplified method or permit the use of other methods by rules or regulations for property acquired for resale. H.R. Rep. No. 99-841 (Conf. Rep.), 99th Cong., 2d Sess. II-308 (1986).

.10 Sections 446(e) and 1.446-1(e)(2) state that, except as otherwise provided, a taxpayer must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes.

.11 Rev. Proc. 2008-52, 2008-2 C.B. 587 (as amplified, clarified, and modified by Rev. Proc. 2009-39, 2009-2 C.B. 371), provides procedures for a taxpayer to obtain automatic consent of the Commissioner to change to a method of accounting described in the APPENDIX of Rev. Proc. 2008-52. Rev. Proc. 97-27, 1997-1 C.B. 680 (as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, as modified by Rev. Proc. 2007-67, 2007-2 C.B. 1072, and as clarified and modified by Rev. Proc. 2009-39), provides procedures for a taxpayer to request non-automatic consent to change a method of accounting.

### SECTION 3. SCOPE

.01 Except as provided in section 3.02, any motor vehicle dealership, as defined in section 4 of this revenue procedure, may use either or both of the safe harbor methods described in section 5 of this revenue procedure.

.02 A motor vehicle dealership that removes § 471 costs from ending inventory by treating them as negative amounts in the numerator of either the simplified resale method formula or the simplified production method formula, may not use either safe harbor method of accounting described in section 5 of this revenue procedure. If a motor vehicle dealership currently removes § 471 costs from ending inventory in that manner, it must change from that method of accounting in accordance with section 7 of this revenue procedure in order to use the safe harbor methods.

### SECTION 4. MOTOR VEHICLE DEALERSHIP

.01 For purposes of this revenue procedure, a motor vehicle dealership is a deal-

ership that primarily purchases and resells to retail customers, one or more of the following categories of new or used motor vehicles:

- (a) automobiles;
- (b) light-duty trucks;
- (c) medium-duty trucks;
- (d) heavy-duty trucks;
- (e) recreational vehicles;
- (f) motorcycles;
- (g) boats;
- (h) farm machinery and equipment; or
- (i) construction machinery and equipment.

### SECTION 5. SAFE HARBOR METHODS

.01 *Retail sales facility safe harbor method.* A motor vehicle dealership may treat its entire sales facility from which it normally and routinely conducts on-site sales to retail customers, including any vehicle lot that is an integral part of its sales facility and that is routinely visited by retail customers, as a retail sales facility under § 1.263A-3(c)(5)(ii)(B). A motor vehicle dealership using this retail sales facility safe harbor method is not required to capitalize handling and storage costs incurred at its retail sales facility.

.02 *Reseller without production activities safe harbor method.* A motor vehicle dealership may treat itself as a reseller without production activities for purposes of § 1.263A-3. For purposes of this revenue procedure, activities that a motor vehicle dealership, or a contractor, perform on dealership-owned vehicles and customer-owned vehicles are handling activities under § 1.263A-3(c)(4), but the costs of these handling activities, other than the cost of vehicle parts, are not required to be capitalized to the extent incurred at the motor vehicle dealership's retail sales facility. A motor vehicle dealership must capitalize the cost of vehicle parts used on dealership-owned vehicles as an acquisition cost of its vehicles, whether the vehicle parts are acquired directly by the dealership or indirectly through a contractor. See §§ 1.471-3 and 1.263A-3(c)(1). A motor vehicle dealership using the reseller without production activities safe harbor method may use the simplified resale method under § 1.263A-3(d) for its vehicles and other eligible property.

## SECTION 6. CHANGE IN METHOD OF ACCOUNTING

A motor vehicle dealership that wants to change its method of accounting under § 263A to either or both of the safe harbor methods described in section 5 of this revenue procedure must use the automatic change in method of accounting provisions in Rev. Proc. 2008–52, as further modified by this revenue procedure, if the dealership is within the scope of Rev. Proc. 2008–52. Otherwise, a motor vehicle dealership may request to change its method of accounting using the non-automatic provisions of Rev. Proc. 97–27, if the dealership is within the scope of Rev. Proc. 97–27.

## SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2008–52 is modified to add new section 11.07 to the APPENDIX, to read as follows:

*.07 Safe harbor methods under § 263A for certain dealerships of motor vehicles.*

(1) *Description of change.* This change applies to a motor vehicle dealership, as defined in section 4 of Rev. Proc. 2010–44 that is within the scope of section 3 of Rev. Proc. 2010–44 and wants to change its method of accounting to (1) treat its sales facility as a retail sales facility or (2) be treated as a reseller without production activities, as described in section 5 of Rev. Proc. 2010–44. A motor vehicle dealership that wants to make an automatic change in method of accounting to use one or both safe harbor methods described in section 5 of Rev. Proc. 2010–44 may make any corresponding changes in the identification of costs subject to § 263A that will be accounted for using the new method (for example, to remove internal profit from inventory costs) or to no longer include negative amounts as additional § 263A costs in the numerator of the simplified resale method formula or the simplified production method formula. However, except as provided in the preceding sentence, a change under this section does not include a change for purposes of recharacterizing “§ 471 costs” as “additional § 263A costs” (or *vice versa*) under the simplified resale method or the simplified production method.

(2) *Certain scope limitations temporarily inapplicable.* The scope limitations in

sections 4.02(1) through (4) and (7) of Rev. Proc. 2008–52, as modified and clarified by Rev. Proc. 2009–39, do not apply to a motor vehicle dealership that changes to one or both of the safe harbor methods in section 5 of Rev. Proc. 2010–44 for its first or second taxable year ending after November 9, 2010.

(3) *Concurrent automatic changes.* A motor vehicle dealership making an automatic change in method of accounting to one or both safe harbor methods described in section 5 of Rev. Proc. 2010–44 and another automatic change in method of accounting under § 263A for the same taxable year may file one Form 3115 to make both changes, provided the dealership enters the designated automatic change numbers for all such changes in Part I on that Form 3115, and complies with the ordering rules of § 1.263A–7(b)(2).

(4) *Multiple adjustments.* In the event that a motor vehicle dealership is taking into account a § 481(a) adjustment from another accounting method change in addition to the § 481(a) adjustment required by a change to a safe harbor method described in section 5 of Rev. Proc. 2010–44, the § 481(a) adjustments must be taken into account separately. For example, a motor vehicle dealership that changed to comply with § 263A in 2009 and was required to take its § 481(a) adjustment into account over four years must continue to take into account that adjustment over the remainder of that four year § 481(a) adjustment period even though the dealership changed to a safe harbor method described in section 5 of Rev. Proc. 2010–44 in 2010 and has an additional § 481(a) adjustment required by that change.

(5) *Designated automatic accounting method change numbers.* The designated automatic accounting method change number for a change to treat certain sales facilities as retail sales facilities as described in section 5.01 of Rev. Proc. 2010–44 is “150.” The designated automatic accounting method change number for a change to be treated as a reseller without production activities as described in section 5.02 of Rev. Proc. 2010–44 is “151.”

(6) *Contact information.* For further information regarding a change under this section, contact Kari Fisher at (202) 622–4970 (not a toll-free call).

## SECTION 8. EXPANDED AUDIT PROTECTION

A motor vehicle dealership that changes its method of accounting under either the automatic provisions of Rev. Proc. 2008–52 or the non-automatic provisions of Rev. Proc. 97–27 to use a method of accounting consistent with the safe harbor methods described in section 5 of this revenue procedure receives the audit protection described in section 7 of Rev. Proc. 2008–52 or section 9 of Rev. Proc. 97–27, as applicable.

Alternatively, if a motor vehicle dealership uses a method of accounting consistent with the safe harbor methods described in section 5 of this revenue procedure on a federal income tax return filed before November 10, 2010, the Service will not assert that these methods are not proper methods of accounting for such taxable year(s).

## SECTION 9. EFFECTIVE DATE

This revenue procedure is effective November 9, 2010.

## SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Kari Fisher of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Kari Fisher at (202) 622–4970 (not a toll-free call).

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*26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.*  
(Also Part I, §§ 118, 362.)

## Rev. Proc. 2010–45

### SECTION 1. PURPOSE

This revenue procedure provides a safe harbor under section 118(a) of the Internal Revenue Code for the treatment of certain grants to corporations from the National Energy Technology Laboratory of the Department of Energy (DOE) under the Electric Drive Vehicle Battery and Component Manufacturing Initiative (the Initiative) as authorized by Division A, Title IV of the

American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (ARRA).

## SECTION 2. BACKGROUND

Section 118(a) of the Code provides that in the case of a corporation, gross income does not include a contribution to the capital of the taxpayer.

Section 1.118-1 of the Income Tax Regulations provides that section 118 applies to contributions to capital made by a person other than a shareholder, for example, property contributed to a corporation by a governmental unit for the purpose of enabling the corporation to expand its operating facilities.

Section 362(c)(2) of the Code requires a basis reduction in a corporation's property when the corporation receives money from a nonshareholder as a contribution to its capital.

Division A, Title IV of ARRA requires the Secretary of Energy to provide facility funding awards to manufacturers of advanced battery systems and vehicle batteries that are produced in the United States, including advanced lithium ion batteries, hybrid electrical systems, component manufacturers, and software designers. \$2 billion was made available for grants for the manufacturing of advanced batteries and components.

The Initiative provides grants for seven Areas of Interest: (1) Cell and Battery Manufacturing Facilities; (2) Advanced Battery Supplier Manufacturing Facilities; (3) Combined Applications for Areas of Interest 1 and 2; (4) Advanced Lithium ion Battery Recycling Facilities; (5) Electric Drive Component Manufacturing Facilities; (6) Electric Drive Subcomponent Manufacturing Facilities; and (7) Combined Applications for Areas of Interest 5 and 6. See Funding Opportunity Number DE-FOA-0000026 (March 19, 2009). This guidance may be accessed electronically at: <http://www.netl.doe.gov/business/solicitations/archive/main-FY09.html#00026>

## SECTION 3. SCOPE

This revenue procedure applies to corporate taxpayers that receive a grant from DOE under the Initiative for Areas of Interest 1 through 7. This revenue procedure does not apply to the portion of any

grant paid or incurred for travel or training expenses or paid to reimburse pre-application expenses. For this purpose, pre-application expenses only include those costs incurred in preparing and submitting an application to receive a grant. This revenue procedure does not apply to noncorporate taxpayers.

## SECTION 4. PROCEDURE

The Internal Revenue Service will not challenge a corporation's treatment of a grant to the corporation from DOE under the Initiative for Areas of Interest 1 through 7 within the scope of section 3 of this revenue procedure as a nonshareholder contribution to the capital of the corporation under section 118(a) of the Code if the corporation properly reduces the basis of its property under section 362(c)(2) and the regulations thereunder.

## SECTION 5. EFFECTIVE DATE

This revenue procedure is effective November 12, 2010.

## SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is David McDonnell of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Mr. McDonnell at (202) 622-3040 (not a toll-free call).

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*26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.  
(Also Part I, §§ 118, 362.)*

## Rev. Proc. 2010-46

### SECTION 1. PURPOSE

This revenue procedure provides a safe harbor under section 118(a) of the Internal Revenue Code for certain grant amounts received by corporate taxpayers engaged in a transportation trade or business for capital projects under 49 U.S.C. 24105, 24401 *et seq.*, and 26106, as enacted by sections 301, 302, and 501, Division B

of the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110-432), and as amended by Title XII, Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (ARRA).

Also, this revenue procedure provides a safe harbor under section 118(a) of the Code for certain grant amounts received by corporate taxpayers engaged in a transportation trade or business for capital investments in surface transportation infrastructure under (1) the Supplemental Discretionary Grants for Capital Investments in Surface Transportation Infrastructure (TIGER Discretionary Grants) program as authorized by Title XII, Division A of ARRA; or (2) the National Infrastructure Investments (TIGER II Discretionary Grants) program as authorized by the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for 2010 (Title I, Division A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117)).

## SECTION 2. BACKGROUND

Section 118(a) of the Code provides that in the case of a corporation, gross income does not include a contribution to the capital of the taxpayer.

Section 1.118-1 of the Income Tax Regulations provides that section 118 applies to contributions to capital made by a person other than a shareholder, for example, property contributed to a corporation by a governmental unit for the purpose of enabling the corporation to expand its operating facilities.

Section 362(c)(2) of the Code requires a basis reduction in a corporation's property when the corporation receives money from a nonshareholder as a contribution to its capital.

The Congestion Grant program under 49 U.S.C. 24105(a) provides that the Secretary of Transportation (the Secretary) may make grants for financing the capital costs of facilities, infrastructure, and equipment for high priority rail corridor projects necessary to reduce congestion or facilitate ridership growth in intercity rail passenger transportation.

The Intercity Passenger Rail Service Corridor Capital Assistance program under 49 U.S.C. 24402(a)(1) provides that the Secretary may make grants to assist in financing the capital costs of facilities,

infrastructure, and equipment necessary to provide or improve intercity passenger rail transportation.

The High-Speed Rail Corridor Development program under 49 U.S.C. 26106(a) provides that the Secretary shall establish and implement a high-speed rail corridor development program. 49 U.S.C. 26106(c) provides that the Secretary may make grants to finance capital projects in high-speed rail corridors.

The Federal Railroad Administration of the Department of Transportation (DOT) issued a Notice of Funding Availability (NOFA), 74 FR 29900, that provides guidance on the High-Speed Intercity Passenger Rail Program, which includes the Congestion Grant program, the Intercity Passenger Rail Service Corridor Capital Assistance program, and the High-Speed Rail Corridor Development program. If Congress makes additional appropriations for these programs, the DOT may issue future NOFAs.

The Office of the Secretary of the DOT issued a NOFA, 74 FR 28755, that provides guidance on TIGER Discretionary Grants. The grants must be for capital investments in surface transportation infrastructure. If Congress makes additional appropriations for this program, the DOT may issue future NOFAs.

The Office of the Secretary of the DOT issued a NOFA, 75 FR 30460, that provides guidance on TIGER II Discretionary Grants. The grants must be for capital investments in surface transportation infrastructure. The NOFA contemplates that some funds may be used to fund the planning, preparation, or design of projects (Tiger II Planning Grants). If Congress makes additional appropriations for this program, the DOT may issue future NOFAs.

### SECTION 3. SCOPE

This revenue procedure applies to corporate taxpayers engaged in a transportation trade or business that receive grant amounts for capital projects under 49 U.S.C. 24105, 24401 *et seq.*, and 26106. However, in no case will this revenue procedure apply to amounts received for the following: (1) the cost of National Environmental Policy Act Documentation, Preliminary Engineering costs that are not capitalized for tax purposes, or the cost of a Service Development Plan as described in 74 FR 29906, section 2.2; (2) the cost of developing a State Rail Plan under 49 U.S.C. 24402(b)(1); or (3) the first-dollar liability cost for insurance related to the provision of intercity passenger rail service under 49 U.S.C. 24404.

Also, this revenue procedure applies to corporate taxpayers engaged in a transportation trade or business that receive grant amounts for the costs of capital investments in surface transportation infrastructure under TIGER Discretionary Grants or under TIGER II Discretionary Grants. In no case will this revenue procedure apply to amounts received to pay the subsidy and administrative costs of the Transportation Infrastructure Finance and Innovation Act of 1998 or to amounts received for TIGER II Planning Grants.

Further, this revenue procedure does not apply to noncorporate taxpayers.

### SECTION 4. PROCEDURE

The Internal Revenue Service will not challenge a corporate taxpayer's treatment of grant amounts received by the corporation for capital projects under 49 U.S.C.

24105, 24401 *et seq.*, or 26106 as a non-shareholder contribution to the capital of the corporation under section 118(a) of the Code if the corporation properly reduces the basis of its property under section 362(c)(2) and the regulations thereunder.

Also, the Service will not challenge a corporate taxpayer's treatment of grant amounts received by the corporation under TIGER Discretionary Grants for capital investments in surface transportation infrastructure or under TIGER II Discretionary Grants for capital investments in surface transportation infrastructure as a nonshareholder contribution to the capital of the corporation under section 118(a) of the Code if the corporation properly reduces the basis of its property under section 362(c)(2) and the regulations thereunder.

### SECTION 5. EFFECTIVE DATE

This revenue procedure is effective November 12, 2010.

### SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is David McDonnell of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Mr. McDonnell at (202) 622-3040 (not a toll-free call).

## Part IV. Items of General Interest

### Foundations Status of Certain Organizations

#### Announcement 2010–90

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

*Former Public Charities.* The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

AARDMORE Center, Inc., Evansville, IN  
Accent Center for Training,  
Baton Rouge, LA  
Affordable California, Los Angeles, CA  
African American Foundation of Greater  
Miami, Inc., Miami, FL  
Albert Jenkins Sr. Ministries, Inc.,  
Greenville, MS  
AM Envirotraining, Inc., San Antonio, TX  
Angelic Touch Medical Mission  
International, Inc., El Paso, TX  
Archeologic Alchemy, Pie Town, NM  
Art in the City, Inc., Markleysburg, PA  
Atlanta Doo-Wopp Association, Inc.,  
Fayetteville, GA  
Atlantic Outreach and Resource Center,  
Los Angeles, CA  
Baby Boomers and Beyond, Inc.,  
Denham Springs, LA  
Balance Your Game, Orange Park, FL  
Baptist Dude Ranch for the Elderly,  
Victorville, CA  
Battle Plan Promotions, Columbus, OH  
Ben Terry Youth Foundation,  
Santa Rosa, CA  
Bertrand Neighborhood Association,  
Dallas, TX  
Bishop Ministries, Inc., Pearland, TX  
Blessing 4 U Incorporated,  
Little Rock, AR

Bridge of Hope, Inc. (B.O.H., Inc.),  
Garden City, GA  
Bridges of Hope Community  
Development Center, Inglewood, CA  
Caribbean Source, McDonough, GA  
Century Club, Scottsdale, AZ  
Chapel of Truth Maranatha,  
Philadelphia, PA  
Childrens Development Initiative,  
Racine, WI  
Christian Renewal Ministries,  
Spokane, WA  
Christians at the Roundtable of our Lord  
and Savior Jesus Christ, Bishopville, SC  
Community Enhancement Corp.,  
Detroit, MI  
Community H E L P, Inc., Detroit, MI  
Community Intervention and Assistance  
Foundation, Sanger, CA  
Computer Career Center Scholarship  
Fund, Inc., Garden City, NY  
Covenant Housing, Inc., Minneapolis, MN  
C R Y Outreach, Florissant, MO  
Dads are Doing Something Foundation,  
Ann Arbor, MI  
David G. Burnet Museum, Inc.,  
Houston, TX  
Division One Kiwanis Foundation, Inc.,  
Mitchellville, MD  
DM Steps, Los Angeles, CA  
Doin Us Proud, Oakland, CA  
Donna P. Jackson Ministries, Inc.,  
Tulsa, OK  
Ebauche Foundation of the Arts,  
New York, NY  
Eucalyptus View, Inc., Escondido, CA  
Family Promise, Southgate, MI  
Federal City Associates, Inc.,  
Washington, DC  
Forever Ministries, West Covina, CA  
Foundation for Efficient Living,  
Los Angeles, CA  
Fraternidad Salvadorena Pro Guasapa,  
Fontana, CA  
Free Indeed, Inc., Wheat Ridge, CO  
Fresh Start of Monroe, Inc., Azle, TX  
Ganesh Balakrishnan Foundation,  
Chanhassen, MN  
Genrecord Online, Inc., Kansas City, MO  
G G & K Ventures, Inc., Prairie View, TX  
Good Neighbor Program, Inc.,  
Van Nuys, CA  
Granbury Educational Access Channel,  
Inc., Granbury, TX

Grand Housing and Finance, Inc.,  
Arlington, TX  
Grassroots Agro-Protection Corporation,  
Beltsville, MD  
Greater Quinn Community Development  
Corporation, Detroit, MI  
His Ministries, Gladstone, MO  
Historic Capitol Theatre Restoration  
Project, Brownsville, TX  
Historic Poindexter Park Community of  
Shalom Zone, Jackson, MS  
Hodari Hope, Hinesville, GA  
Homeless Aged and Youth Awareness of  
Texas, Duncanville, TX  
Honey Bears, Inc., Los Angeles, CA  
I Have Crossed the Red Sea Ministry,  
Houston, TX  
Inca Imports, Inc., Warrenton, VA  
Incentive Ranch, Inc., Wallis, TX  
In the Mighty Name of Jesus Christ  
Ministry, Canal Winchester, OH  
Jenn Lioy Education Foundation,  
Petaluma, CA  
Joshuas House, Troutdale, OR  
Lakeside Optimist Youth Foundation,  
Lakeside, CA  
Lillie Bell Corporation, Inc., Atlanta, GA  
Lincoln Prep Boys Basketball Foundation,  
San Diego, CA  
Living Word of God Community Center,  
Inc., Fort Wayne, IN  
Loving Care Assisted Living Center,  
Missouri City, TX  
Mercy Group, Chesterfield, MO  
Metro Sportsmens Club, Coleman, MI  
Ministries of Mercy, Baltimore, MD  
Mississippi River Citizens Commission,  
Dakota, MN  
MS Delta Housing Program, Inc.,  
Jackson, MS  
Musicians and Artists of Collin County,  
Inc., Plano, TX  
New Horizon Community Services,  
Jesup, GA  
New Start Outreach Ministries, Inc.,  
Long Beach, CA  
Ozone Business Gallery, Youngstown, OH  
Panhandle Aquatics, Inc., Amarillo, TX  
Papillon Industries Incorporated,  
Springfield, VA  
Peace Center, Inc., Bowie, MD  
People With a Vision, Harrisburg, PA  
Priestley Chapel Outreach Ministries,  
Inc., Canton, MS

Reach One Teach One Academy, Inc.,  
Charlotte, NC  
REC Club, Wareham, MA  
Rewards Network, Pittsburgh, PA  
Rhea's Educational Arts Foundation,  
Pikesville, MD  
San Jeronimo Foundation,  
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Second Chance Ministry, Silver City, NC  
Shelem Corporation, Troutdale, OR  
Sigma Oklahoma Foundation,  
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Spirit of Life Foundation, Inc.,  
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Strategic Partnership of Michigan, Inc.,  
Southfield, MI  
Swift Track Club, Inc.,  
Farmington Hills, MI

Take the Reins, Inc., Fairfield, CA  
Teddy Bear Club Daycare, Inc.,  
Brooklyn, NY  
Time Out for Christ Christian Missionary,  
Stone Mtn, GA  
Training Authority Group, Inc.,  
Charleston, WV  
Tree of Life Aftercare Program,  
Louisville, KY  
T.W.C. Residential Facility, Inc.,  
Pine Bluff, AR  
Ujima Mission to Africa, Montclair, NJ  
Umueze Visions, Inc., Philadelphia, PA  
United Vietnamese Americans,  
San Jose, CA  
Valley CAN, Fresno, CA  
Vision of Fire Ministries, Lodi, CA  
Westchester Childrens Museum,  
White Plains, NY  
Westside International Ministries,  
Dover, DE

Whaz-Up Productions, Inc.,  
Clarksville, GA

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.

ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel’s Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.

PRS—Partnership.  
PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2010–1 through 2010–26 is in Internal Revenue Bulletin 2010–26, dated June 28, 2010.

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#### **2009-18**

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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2010–1 through 2010–26 is in Internal Revenue Bulletin 2010–26, dated June 28, 2010.





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